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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 473

COYNE ELECTRICAL SCHOOL, INC.,
Petitioner,

vs.

F. J. BUCKLEY AND E. H. BUCKLEY, DOING BUSINESS AS F. J. BUCKLEY AND COMPANY,
Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

BRIEF COMMENT CONCERNING RESPONDENTS' STATEMENT OF THE CASE

In respondents' "STATEMENT OF THE CASE" there appears an extraordinary statement suggesting and implying to this Court that testimony was taken showing a very large

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[1]Following the practice used in the Petition, the petitioner is herein referred to as *Coyne* or *the Coyne School,* and respondents are herein referred to as *Buckley.*

total amount of petitioner's Government contracts which Buckley claimed to have procured. That suggestion in Buckley's Brief (see Note 2) is entirely erroneous and can hardly fail to mislead this Court about the whole case. No evidence whatever appears in the Record on the point. On the contrary, the figures set out by Buckley are mere calculations by his Counsel. Moreover, the Record shows that the Counsel made such calculations from Finding No. 28 of the Master (R. 26, 27), which particular Finding was squarely overruled by the trial court's Decree (R. 47), and the trial court's Decree in this respect was never disturbed by the Illinois Appellate Court.

The only issues before the Master and before the Chancellor, and the only issues passed upon by the Appellate Court, are two:

(a) Whether or not there existed a contingent fee agreement between Coyne and Buckley; and

(b) If such an agreement existed, whether or not it was valid under federal public law and particularly under Executive Order 9001.

No testimony whatever was taken as to the total amount of petitioner's school contracts with the Government. Accordingly, this statement in respondents' Brief to which we have referred is highly improper.

Another grave misstatement in Buckley's Brief (page 2) recites:

"... petitioner secured contracts totalling over 1¼ million dollars as a result of his efforts (R. 245); ..."

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[2]Buckley's Brief in Opposition (page 2) says on this point:

"... Buckley performed extensive services, all to petitioner's complete satisfaction, which netted it contracts in excess of $1,226,722. (R. 26, 27), all of which petitioner retains," etc.

If the Court will turn to the cited pages of the Record, it will find no justification whatever for that statement.

Here, again, if the Court will turn to the Record it will be found there is no evidence whatever justifying that statement. The truth is, as Colonel Rooks testified (R. 326 and 339), that Buckley had nothing to do with securing any of the contracts which Coyne got (under Colonel Rooks' supervision) from the United States Government.

Finally, Buckley's Brief makes a totally erroneous statement in attempting to deny that Buckley was "the only agent" in Washington attempting to solicit school contracts on a percentage basis.[3] Here, again, if the court examines the Record it will see that the evidence completely disputes Buckley's contention on this point. Thus it particularly appears in the Record (R. 337) that Colonel Rooks positively stated:

> "He (Buckley) is the only one I had any knowledge of acting on a commission basis."

We call particular attention to these erroneous statements, but will not comment further on such methods of advocacy.

I.

THE PETITION WAS TIMELY FILED.

Under Point I of respondents' *"Argument"* much emphasis is placed upon a belabored contention that

"This Petition Was Not Filed in Apt Time."

This entire Point is based upon the theoretical argument that the Supreme Court of Illinois did not have "jurisdiction" to hear and consider Coyne's Petition for Leave to

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[3]The language of Buckley's Brief on this point is (page 2):

> "Similarly the statement of the petition (Pet. 4) that Buckley was the only agent in Washington soliciting training contracts on a percentage basis is absolutely contrary to the facts (R. 335, 336)."

Appeal, from the Appellate Court; and that therefore petitioner's 90 day period of time for filing should be counted from June 22, 1951, when the Appellate Court finally disposed of the case (R. 364). The argument about the Supreme Court's alleged lack of "jurisdiction" is based upon Buckley's interpretation of a provision in the Illinois Civil Practice Act (Smith-Hurd Ill. Ann. Stat. Ch. 110, Sec. 199) which in effect makes Appellate Court decisions final where the judgment involved is less than $1500.

Coyne's Petition (page 8, footnote 6) gives the substance of the Record as to the matter of *time*—being the dates upon which the various rulings and orders of the Appellate Court and of the Supreme Court, respectively, were made and entered. In substance it appears that the Appellate Court ended its consideration of the case June 22, 1951, and that within the time permitted under the Illinois statutes Coyne filed in the Supreme Court of Illinois, its "Petition for Leave to Appeal" from the Appellate Court. Regardless of what Buckley may argue about the "jurisdiction" of the Supreme Court, the Record shows (R. 444) that the Supreme Court *took jurisdiction* of Coyne's Petition for Leave to Appeal, and considered it and denied that Petition September 12, 1951. The Record further shows that Coyne promptly filed in the Supreme Court a printed "Motion for Reconsideration," and the Supreme Court took jurisdiction of that Motion and considered it and denied it September 21, 1951 (R. 453).

Therefore, since the Record in this Court shows in convincing fashion that the Supreme Court of Illinois *took jurisdiction* of the case, we say that Buckley's agrument that the Illinois Supreme Court did not have "jurisdiction" is foreclosed and decided.

The Record further shows that on July 18, 1951 the Appellate Court, in vacation, entered an Order finding and

certifying that with respect to Buckley's claim "there is fairly involved in Appellants' claim the sum of $1500 or more." This Order of the Appellate Court (R. 364) was secured by Coyne in accordance with the settled practice in Illinois, and for the particular purpose of preventing the raising of any such question as that here raised by Buckley. It was this Certificate of the Appellate Court that obviously satisfied the Supreme Court on the point of its own jurisdiction under the Illinois Civil Practice Act.

The only Illinois case which Buckley's Brief cites in support of its argument as to the lack of jurisdiction in the Supreme Court is *Martin* v. *Estate of Martin,* (1941) 337 Ill. 392. The precise question raised in Buckley's Point I was not definitely considered by the Supreme Court of Illinois in the *Martin* case; and it is only by using that case arguendo that Buckley's Brief is able to cite it. The *Martin* case shows that the plaintiff's pleading claimed an amount in excess of $1500 but that the judgment appealed from was less than $1500. Under that situation it was apparent on the record before the Supreme Court in the *Martin* case that the minimum requirement of the Illinois Practice Act that the appellant's claim must be for $1500 or more, was not met. Obviously, the Illinois Supreme Court in the *Martin* case was correct in holding that it did not have jurisdiction. It is obvious also that the extended quotation from the *Martin* case in Buckley's Brief (pages 5 and 6) has little application to the case at bar.

A Controlling Case

Buckley's Brief on this Point I has failed to cite what we consider a controlling case on this "Point I", *Matthews* v. *Trinity Universal Insurance Co.,* (1947), 397 Ill. 174, 74 N.E. 2d 787. In that case the defendant had been successful in the trial court, but the Appellate Court of Illi-

nois had reversed the judgment and sent the case back "with directions to enter judgment for the plaintiff" under certain conditions. The defendant in the *Matthews* case took an appeal to the Supreme Court of Illinois. However, the defendant failed to secure from the Illinois Appellate Court the necessary Certificate under the Illinois Practice Act (as was done by the petitioner in this *Buckley* v. *Coyne* case), to the effect that "$1500 or more" was involved in the claim of the plaintiff. After the Petition for Leave to Appeal was granted, plaintiff filed a motion to dismiss the appeal for lack of jurisdiction because of the absence of the Certificate of the Appellate Court.

The Supreme Court in the Matthews case sustained the motion to dismiss for lack of jurisdiction because no such Certificate of the Appellate Court appeared in the record. The Court laid down the applicable rule of law in such cases in clear language, as follows:

> "In the present case, the Appellate Court did not direct that judgment be entered in favor of plaintiff for any specified sum. Judgment was directed contingent upon there being no other defense interposed to his action. Judgment in the trial court was against the plaintiff. There is no judgment in existence from which the jurisdictional amount can be determined. Under former statutes it would have been possible, where there was no trial on an issue of fact, to resort to the pleadings to determine the jurisdictional amount involved. The present statute contains no such provision. In this class of cases jurisdiction is now based on the amount of the judgment. (*Martin* v. *Estate of Martin,* 377 Ill. 392). There being no judgment from which the amount involved can be determined, it follows that no jurisdiction is conferred on this court to review the judgment of the Appellate Court in the absence of a certificate issued by that court, or by one

> of the judges thereof in vacation, to the effect that there is fairly involved in the claim of the plaintiff the sum of $1500 or more."

The rule thus stated by the Supreme Court of Illinois is in accord with common sense. It was certainly not the intention of the Illinois Legislature, in the Practice Act, to say that the Supreme Court is utterly without appellate jurisdiction in this *Buckley* case, even though the Appellate Court has made the statutory Certificate as to the amount of the claim involved. The issuance of that Certificate by the Appellate Court of Illinois should be construed in this Court as a binding interpretation of the meaning of the Illinois Practice Act for the purposes of this *Buckley* case.

Furthermore, the Supreme Court of Illinois did not deny Coyne's Petition for Leave to Appeal on jurisdictional grounds. On the contrary, the Record shows the Supreme Court of Illinois took jurisdiction of Coyne's Petition for Leave to Appeal, but denied it. Therefore we have the clearly implied holding of the Supreme Court of Illinois that it had jurisdiction in this *Buckley* v. *Coyne* case.

This Court has held in *Gregory* v. *McVeigh,* (1875) 23 Wall. 294, 23 L.Ed. 156, that the denial by the highest court of a state of a petition to appeal "is equivalent to a judgment of affirmance, and is such a final judgment as may be made the basis of proceedings under the appellate jurisdiction of this court." Therefore, under the ruling of this Court the denial by the Supreme Court of Illinois of Coyne's Petition for Leave to Appeal constitutes "a judgment of affirmance" of the Appellate Court's holding in the case at bar. This is particularly true since Buckley never properly raised the point in the Supreme Court of Illinois that the Court had no jurisdiction of Coyne's Petition for Leave to Appeal by motion to dismiss.

We respectfully say that the decision of this Court in the *Gregory* v. *McVeigh* case, taken in connection with the holding of the Supreme Court of Illinois in *Matthews* v. *Trinity Universal Insurance Co.*, case, *supra,* completely disposes of Buckley's argument on this "Point I."

II.

WHETHER BUCKLEY'S ACTIVITIES COME WITHIN THE EXCEPTION OF EXECUTIVE ORDER 9001 IS A MIXED QUESTION OF FACT AND LAW.

Petitioner recognizes that this Court will not disturb findings of fact made by the highest state court except under extraordinary circumstances. Among the extraordinary facts found in the Appellate Court's Opinion is the utterly amazing finding appearing in the Majority Opinion (R. 423), when the Court speaks of a modification of Buckley's compensation, stating, ". . . the rate of pay to Buckley was modified about March 21, 1942; . . . this modification was evidenced in writing by a letter from Lewis". No such writing is relied upon by respondents, and indeed, there is no writing or memorandum which supports a modification of the over-all contingent fee agreement of March 12, 1942. The respondents themselves do not rely upon a written agreement; their action is based upon an asserted oral agreement. Yet the Appellate Court gratuitously finds the existence of a written agreement. *It is impossible to find this written agreement among the exhibits introduced in this case.*

The Master in this case found (R. 30) that Buckley (individually, and not the partnership, and not including his wife) was a bona fide and established commercial and selling agency maintained by defendant within the exception of Executive Order 9001. This finding was expressly overruled by the Chancellor after extensive review of the facts

and argument (R. 47, paragraph G). The facts as to what Buckley did are clear from the testimony. The Chancellor below held that Buckley's activities did not come within the exception of Executive Order 9001, whereas the Appellate Court held they did. We respectfully submit that the controlling decisions in the federal courts are directly opposed to the decision on this issue by the Appellate Court. The Appellate Court Opinion makes no determination of fact as such with respect to Buckley's activities as coming within the exception provided in Executive Order 9001. It is simply the opinion of the Appellate Court that these activities come within the exception, and it is this opinion which the petitioner urges is not supported by the controlling federal decisions. For example, the Majority Opinion of the Appellate Court suggests (R. 428) that Buckley's activities come within the exception because they were "not limited to one contract alone." *Not a single federal case can be cited in which a person was employed solely to procure federal contracts where this qualification of the rule is approved.*

Much emphasis is also placed under this Point II of Buckley's Reply Brief on the question of the effect to be given the absence of any direct evidence of the use of political or personal influence by Buckley in procuring government contracts for Coyne. This argument has never impressed this Court in the several instances in which the question has arisen. As stated by Mr. Justice Holmes in *Hazelton* v. *Sheckells,* (1906) 202 U.S. 71,

> "The court will not inquire what was done. If that should be improper, it probably would be hidden, and would not appear. In its inception, the offer, however intended, necessarily invited and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward. *Marshall* v. *B. & O. R.R.,* 16 How. 314, 335, 336."

CONCLUSION

For the reasons which petitioner has set forth in the Petition and accompanying Brief, and in this Reply to Respondents' Brief, it is respectfully submitted that this case presents an important question of public policy calling for the exercise by this Honorable Court of its supervisory powers over questions of federal law. We respectfully urge this Honorable Court to grant a writ of certiorari to review the Majority Opinion of the Appellate Court of Illinois.

Respectfully submitted,

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Dated at Chicago, Illinois,
January 15, 1952.